IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1726 of 2001 (M/B)

(Old No. 35117 of 1998)

1. Udyog Vyapar Mandal,
   Garampani, through its General Secretary,
   Shanker Nath Goswami, Resident of Village
   Chhara Kherta, post Office Garampani,
   District Nainital.
2. Kishan Singh Jalal, Son of Shri Diwan Singh Jalal,
   Resident of Village Chhara Kherta,
   Post Office Garmapani, District Nainital. ..... Petitioners

Versus

1. The Zila Panchayat, Nainital, through
   its Upper Mukhya Adhikari.
2. The President,
   Zila Panchayat, Nainital.
3. The Commissioner,
   Kumaun Division at Nainital.
4. The State of U.P. ..... Respondents

Sri S. Dhulia, Senior Advocate for the petitioners.
Sri R.S. Bist. Advocate for respondents 1 and 2..
Sri J. P. Joshi, Addl. C.S.C. for respondents 3 and 4.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPAT, C. J. (Oral)

Sri Dhulia, Senior Advocate for the petitioners.

Sri R.S. Bist, Advocate for respondents 1 and 2.

Sri J. P. Joshi, Addl. C.S.C. for respondents 3 and 4.

They are heard.

2. The petitioners have filed this writ petition for the following reliefs:

(i) issue a writ, order of direction in the nature of certiorari, quashing the impugned by-laws made by the Zila Panchayat, Nainital, under section 239(2) (d) of the Act ;

(ii) issue a writ, order or direction in the nature of mandamus declaring amendment to the bye-laws, pertaining to the licence fee, under section 239(2)(d) of the Act as illegal, ultra vires and unconstitutional and prohibit respondent no.1 from realizing the enhanced "licence fee"

AND

(iii) issue a writ, order or direction in the nature of mandamus, commanding the Zila Panchayat, Nainital not to realise any “licence fee” from the shop-keepers at Garampani bazaar District Nainital / petitioners through Contractor(s) o agents not being employees of Zila Panchayat.

AND

(iv) issue any other writ, order or direction, which this Hon’ble Court may deem proper and appropriate under the facts and circumstances of the case.

AND

(v) award cost of the writ petition to the petitioners.”

3. Respondents 1 and 2 in their counter affidavit have raised a preliminary objection about the maintainability of the writ petition on the ground that the petitioners have the statutory remedy of filing an appeal U/s 251 of the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyan, 1961 against the impugned order.

4. Sri Sudhanshu Dhulia, learned counsel for the petitioners does not dispute that the petitioners have the statutory remedy of filing an appeal under Section 251 of the Act against the impugned order.

5. In this view of the matter, we decline to admit the writ petition for final hearing.

6. The petitioners, if advised, may file an appeal against the impugned order and also seek condonation of the delay in filing the appeal on the ground that the petitioners were pursuing the writ petition for all these years under *bona fide* belief.

7. With the above observation, the writ petition stands disposed of.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C. J.)**
02.05.2006 **02.05.2006**

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